

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**DENA C. VICKERS**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 4:07-CV-095-TSL-LRA**

**MICHAEL ASTRUE,  
COMMISSIONER OF SOCIAL SECURITY**

**DEFENDANT**

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**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

This Court rendered a decision in favor of the plaintiff on March 24, 2009, and Plaintiff has now filed an [19] Application for Attorney Fees under The Equal Access to Justice Act [28 U.S.C. §2412(d)]. Plaintiff, through her counsel, applies for an award of \$ 7,255.38 for forty-three (43) hours of professional services, plus costs of \$377.60 and expenses of \$33.59, for a total of \$7, 666.57. The Court, having considered the matter carefully, hereby recommends as follows:

Pursuant to the EAJA, 28 U.S.C. §2412 (d)(1)(A), a Court must award attorney's fees to a prevailing social security claimant unless the Secretary's position in denying benefits was substantially justified. Plaintiff alleges that the position of Defendant was not substantially justified in that the Secretary defended this case when there could have been no reasonable expectation that she could ultimately prevail on the merits. The Secretary has filed no objection to the application for attorney's fees.

In support of the instant motion, counsel submits an itemized of the lists of services rendered for Plaintiff in this case totaling 43.00 hours. (Exhibit A to Motion) Plaintiff requests that the EAJA statutory rate of \$125.00 per hour be

adjusted for increases in the cost of living in Dallas-Fort Worth, Texas, making her total fee for services \$7,255.38. (Exhibit B to Motion) Additionally, Plaintiff advises she has incurred the following court costs, which are compensable under the EAJA: filing fees \$350.00, copying costs, \$27. 60, (computed at .20 per page for 138 pages), and postage expenses \$33.59. Plaintiff therefore requests an award of attorneys fees in the total amount of \$7, 666.57.

Based upon the foregoing, it is the recommendation of the Undersigned that Plaintiff's unopposed motion for attorney fees should be granted, and Plaintiff's attorney should be awarded \$7, 666.57 in fees, pursuant to the EAJA, 28 U.S.C. 2412.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636, **Douglass v. United Services Automobile Association**, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED THIS the 30th day of October 2009.

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S/Linda R. Anderson  
UNITED STATES MAGISTRATE JUDGE